LIBRARY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-691

HYDE PARK MEDICAL LABORATORY INC., an Illinois corporation and JAMES A. WRIGHT, individually and as the President, sole Shareholder and Director thereof,

Petitioners,

vs.

ILLINOIS DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, HAROLD O. SWANK, EDWARD WEAVER, ROBERT G. WESSEL, PATRICK F. KAIN, FRANKLIN D. YODER, ROBERT G. BILSTEIN, R. F. SONDAG, DOUGLAS E. WADE, individually and as employees of the Illinois Department of Public Aid and Health,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601, 312-793-3500,

Attorney for Respondents.

BONNY SUTKER BAREZKY,
Assistant Attorney General,
130 North Wells Street, Suite 1700,
Chicago, Illinois 60606, 312-793-5635,

Of Counsel.

INDEX

	Page
Opinions Below	2
Jurisdiction, Objections Thereto	2
Questions Presented for Review	3
Table of Statutes and Cases	4
Additional Statement of the Case	8
Argument:	
I. The United States Supreme Court Should Not Exercise Its Discretionary Certiorari Jurisdiction Since It Is Manifest That The Case Presents Neither A Substantial Federal Question Nor A Conflict Of Decisions	12
Conclusion	19
Appendix	21

TABLE OF CASES AND STATUTES INVOLVED

Cases:

Bowers v. *Columbia General Corp.*, 336 F. Supp. 609 (D.C. Del. 1971)	17
Canty v. *Board of Ed., City of N.Y.*, 312 F. Supp. 254 (D.C. N.Y. 1970)	17
Clairol, Inc. v. *Gillette Co.*, 270 F. Supp. 371 (D.C. N.Y. 1967)	16
Com-Share, Inc. v. *Computer Complex, Inc.*, 458 F. 2d 1341 (C.A. Mich. 1972)	14
Copeland v. *South Bend Community School Corp.*, 376 F. 2d 585 (C.A. Ind. 1967)	14
Detroit Football Co. v. *Robinson*, 283 F. 2d 657 (C.A. La. 1960)	15
Durham v. *U.S.*, 91 S. Ct. 858, 401 U.S. 481, 28 L. Ed. 2d 200 (1971)	18

Environmental Defense Fund v. *T.V.A.*, 339 F. Supp. 806, (D.C. Tenn. 1972) 15
Erie Lackawanna Ry. Co. v. *Lighter Captains Union Local 996, I.L.A.*, 338 F. Supp. 955, (D.C.N.J. 1972) 16
Gianni Cereda Fabrics, Inc. v. *Bazaar Fabrics, Inc.*, 335 F. Supp. 278, (D.C.N.Y. 1971) 16
Heyman v. *Ar. Winarick, Inc.*, 166 F. Supp. 880 (D.C.N.Y. 1958) 15
Hornbach v. *Brotherhood of R.R. Signalmen*, 346 F. 2d 161 (C.A. Ky. 1965) 14
Hulburt Oil & Grease Co. v. *Hulburt Oil & Grease Co.*, 346 F. 2d 260 (C.A. Ill. 1965), cert. den. 86 S. Ct. 78, 382 U.S. 835, 15 L. Ed. 2d 77 14
Jones v. *Snead*, 431 F. 2d 1115 (C.A. Mo. 1970) 14
Kontes Glass Co. v. *Lab Glass, Inc.*, 373 F. 2d 319 (C.A.N.J. 1967) 14
Layne & Bowler Corp. v. *Western Well Workes, Inc.*, 261 U.S. 387, 67 L. Ed. 712, 43 S. Ct. 422 (1923) .. 12
Moor v. *Texas & N.O.R. Co.*, 297 U.S. 101, 80 L. Ed. 509, 56 S. Ct. 372 (1936) 3
Newbern v. *Lake Lorelei, Inc.*, 308 F. Supp. 407 (D.C. Ohio 1968) 14
Rice v. *Sioux City Memorial Parks Cemetery*, 75 S. Ct. 614, 349 U.S. 70, 99 L. Ed. 897 (1955) 18
Tropic Film Corp. v. *Paramount Pictures Corp.*, 319 F. Supp. 1247 (D.C.N.Y. 1970) 16
U.S. v. *Board of Ed. of Greene County, Miss.*, 332 F. 2d 40 (C.A. Miss. 1964) 15
United States v. *Shannon*, 342 U.S. 288, 96 L. Ed. 321, —— S. Ct. —— (1951) 18

STATUTES:

Supreme Court Rule 19 4
Supreme Court Rule 23 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-691

HYDE PARK MEDICAL LABORATORY INC., an Illinois corporation and JAMES A. WRIGHT, individually and as the President, sole Shareholder and Director thereof,

Petitioners,

vs.

ILLINOIS DEPARTMENT OF PUBLIC AID, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, HAROLD O. SWANK, EDWARD WEAVER, ROBERT G. WESSEL, PATRICK F. KAIN, FRANKLIN D. YODER, ROBERT G. BILSTEIN, R. F. SONDAG, DOUGLAS E. WADE, individually and as employees of the Illinois Department of Public Aid and Health,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court is unreported and is not included in the petition. However, the opinion of the Court of Appeals for the Seventh Circuit is in the Appendix. (Appendix A)

JURISDICTION-OBJECTIONS THERETO

Pursuant to Supreme Court Rule 23(1)(6) Petitioners have failed to include the mandatory statement of the grounds on which the jurisdiction of this Court is invoked. Additionally, it is clear that pursuant to Supreme Court Rule 19 (1) a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are "special and important" reasons therefor. Petitioners have not set forth reasons, special or otherwise, the character of which would require consideration by this Court according to the standards set forth in Supreme Court Rule 19 (1) (a) and (b). Petitioners merely set forth by citation various and sundry Statutes and Amendments without stating the grounds which may or may not require the jurisdiction of this Court to be invoked. Furthermore, the Statutes and Amendments cited are not at issue in this case. The District Court Judge denied petitioners' motion for preliminary injunction. The United States Court of Appeals, Seventh Circuit, decided only one issue, whether the District Court Judge abused his discretion in denying a preliminary injunction (See Appendix A, p. 23). The Statutes and Amendments cited shed no light on whether the District Court abused its discretion. There is nothing in the record to support consideration of these citations at this point in the litigation irrespective of whether this Court grants the writ for any other reason.

It is respectfully submitted that there are no "special and important" reasons for granting review on a writ of certiorari as contemplated by Supreme Court Rule 19. The issue raised by petitioners regarding a review of the District Court's decision based on the facts is purely factual and is of no legal moment. In accord with this proposition is *Moor* v. *Texas & N.O.R. Co.*, 297 U.S. 101, 80 L. Ed. 509, 56 S. Ct. 372 (1936), where the petitioners sought a preliminary injunction in a Federal District Court alleging a constitutional question. The District Court did not rule upon the constitutional question, but instead denied the injunction on the ground that it had not been shown that the petitioner would suffer irreparable injury for which he had no adequate remedy at law. The Court of Appeals affirmed the District Court's decree on the ground that a preliminary injunction was not to be granted as a matter of right, but was to be granted or refused in the exercise of sound judicial discretion. The Supreme Court dismissed the writ of certiorari, holding that in view of the record and of the wide discretion which the District Court was entitled to exercise, the writ of certiorari was improvidently granted.

We respectfully submit for the reasons stated above that jurisdiction to review this matter on certiorari should not be exercised.

QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court should review this case on a Petition for Certiorari where the only issue decided in the court below is whether the district judge abused his discretion in denying a preliminary injunction.

STATUTES INVOLVED

Supreme Court Rule 19

28 U.S.C.A. Supreme Court Rule 19:

PART V. JURISDICTION ON WRIT OF CERTIORARI

Rule 19. Considerations governing review on certiorari

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of cer-

tiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

Supreme Court Rule 23,

28 U.S.C.A. Supreme Court Rule 23:

Rule 23. The petition for certiorari

1. The petition for writ of certiorari shall contain in the order here indicated—

(a) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported. Any such opinions shall be appended as provided in subparagraph (i) hereof.

(b) A concise statement of the grounds on which the jurisdiction of this court is invoked, showing:

(i) The date of the judgment or decree sought to be reviewed, and the time of its entry;

(ii) The date of any order respecting a rehearing, and the date and terms of any order granting an extension of time within which to petition for certiorari; and

(iii) The statutory provision believed to confer on this court jurisdiction to review the judgment or decree in question by writ of certiorari.

(c) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court.

(d) The constitutional provisions, treaties, statutes, ordinances, or regulations which the case involves, setting them out verbatim, and citing the

volume and page where they may be found in the official edition. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text shall be set forth in an appendix.

(e) A concise statement of the case containing the facts material to the consideration of the questions presented.

(f) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e. g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari.

Where the portions of the record relied upon under this subparagraph are voluminous, then they shall be included in an appendix to the petition, which may, if more convenient, be separately presented.

(g) If review of the judgment of a federal court is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for the allowance of the writ. See Rule 19.

(i) There shall be appended to the petition a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including all opinions of courts or administrative agencies in the case, and, if reference thereto is necessary to ascertain the grounds of the judgment or decree, opinions in companion cases. The opinions shall include the caption showing the name of the court or agency issuing the same and the title and numbers of the case and the date of their entry. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

(j) If review of the judgment or decree of a state court is sought, there shall also be appended to the petition a copy of the judgment or decree in question and any order on rehearing; and, if review of the judgment or decree of a federal court is sought, there shall similarly be appended a copy of such judgment or decree and any order on rehearing, which may however be limited to the portions thereof sought to be reviewed. The judgments, decrees, or orders on rehearing shall include the caption showing the name of the court issuing the same, the title and number of the case, and the date of entry of such judgment, decree and order.

2. The petition for writ of certiorari shall be printed in conformity with Rule 39.

3. All contentions in support of a petition for writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph (h) of paragraph 1 of this rule. No separate brief in support of a petition for writ of certiorari will be received, and the clerk will refuse to file any petition for writ of certiorari to which is annexed or appended any supporting brief.

4. The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential

to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

5. Where several cases are sought to be reviewed on certiorari to the same court that involve identical or closely related questions, it shall suffice to file a single petition for writ of certiorari covering all the cases.

STATEMENT OF THE CASE

Petitioners' Statement of the Case, contrary to Supreme Court Rule 40 which requires that petitioners' brief contain a concise statement of the case and all that is material to consideration of the question presented, contains inference irrelevancy, and innuendo hardly material to the issue at bar. Statements are made without appropriate references to the appendix or to the record and indeed often are not supported by the record.

Respondents, therefore, submit the complete and unembellished Statement of the Case as set forth in the order of the Court of Appeals (See Appendix A). In pertinent part, the Statement of the Case is as follows:

> "This is an appeal from an order denying plaintiffs' motion for a preliminary injunction.
>
> • • •
>
> Plaintiff, Hyde Park Medical Laboratory, Inc., a previously unincorporated clinical laboratory licensed pursuant to the Illinois Clinical Laboratory Act, Ill. Rev. Stat., ch. 111½ § 621-631, was incorporated on February 6, 1969. The licensing agency, the Illinois Department of Public Health, contends that it did not receive formal notice of the intent to incorporate or of the actual incorporation, although the plaintiffs have submitted a copy of a letter dated February 1, 1969, informing the Department that it was in the

process of incorporating, that the incorporation was for tax purposes only, and that there would be no change in technical supervision, ownership or location.

The laboratory's license was renewed for the years 1970 and 1971. On August 20, 1971, the plaintiff Wright was notified by the Department that because of the change in ownership he would have to complete a new license application. He was also requested to return his old license to be voided. The plaintiff refused to complete the application form which would have classified the laboratory as a "new" laboratory. Plaintiffs vigorously resist this designation because it would subject the laboratory to numerous rules and regulations and a new statute which are not applicable to laboratories licensed before passage of the new act whose licenses have been continually renewed.* The license application was finally completed and received by the Department of Public Health on September 5, 1972. After the standard investigation by the Department the new license was mailed to the plaintiff Wright but he has refused to accept it.

The complaint filed by Hyde Park Medical Laboratory, Inc., and James A. Wright, its sole shareholder, president, and director alleged that the plaintiffs' civil rights had been violated as a result of the arbitrary and discriminatory failure to renew the plaintiff's license and to restore participation in the Department's Medical Assistance Program. Numerous other civil rights violations were also alleged, including: failure to provide a hearing prior to the revocation of the license and suspension of participation in the Medical

---

*The appellants' brief, prepared by plaintiff James A. Wright, acting pro se, does not contain a specific citation of the new rules, regulation, and statute to which the plaintiff laboratory would be subject under the "new" classification.

Assistance Program; failure to provide a hearing prior to submitting complaints about the plaintiff to the Attorney General, the State's Attorney of Cook County, and other government agencies, discrimination on the basis of race; failure to pay numerous bills for services performed, defamation, destruction of plaintiff's business and personal reputation; and a conspiracy to defeat the plaintiff's efforts to obtain a license.

It is not necessary to decide the numerous factual and legal issues raised by the plaintiffs' brief in this appeal, but merely to determine whether the district judge abused his discretion in denying a preliminary injunction.

From the transcript of the hearing on the motion for a preliminary injunction, it appears that the injunction was denied because the plaintiff Wright refused to sign a proposed stipulation for the entry of an order, to which both his counsel and the Attorney General had agreed. This order would have permitted the laboratory to operate under the rules and regulations for clinical laboratories and blood banks that were in effect prior to November 15, 1970, and would have required it to comply with rules and regulations regardless of their date of promulgation where such requirements would be applicable to all laboratories that were in operation prior to November 15, 1970. It also ordered the defendants to issue a new license and ordered the plaintiff to complete the necessary forms and pay the required fee for the issuance of the license. This proposed stipulation would have provided a reasonable accommodation of the conflicting interests while the factual and legal issues were being litigated in the district court. We find no abuse of discretion in the denial of a preliminary injunction on the basis of the plaintiff Wright's unreasonable refusal to consent to the proposed stipulation."

Accordingly, the judgment of the District Court was affirmed. Numerous dilatory motions ensued including: a motion directed to a three-judge panel to reopen the original appeal; a motion for rehearing; a motion for rehearing en banc; a motion for issuance of stay of mandate pending rehearing en banc; a motion for issuance of stay of mandate pending petition for Writ of Certiorari in the Supreme Court of the United States; and a motion to "review the appeal in view of additional and new evidence establishing overwhelming proof that the trial judge abused his discretion by failing to grant relief to proven wrongs," all of which motions were denied. It is from the affirmance of the order of the District Court denying a preliminary injunction that Petitioner now petitions this Court for Writ of Certiorari.

ARGUMENT

I.

THE UNITED STATES SUPREME COURT SHOULD NOT EXERCISE ITS DISCRETIONARY CERTIORRARY JURISDICTION SINCE IT IS MANIFEST THAT THE CASE PRESENTS NEITHER A SUBSTANTIAL FEDERAL QUESTION NOR A CONFLICT OF DECISIONS.

Pursuant to Supreme Court Rule 19, it is clear that a review on Writ of Certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor. The character of reasons which will be considered are set forth in Supreme Court Rule 19 and are essentially where a case presents a substantial Federal question or a conflict of decisions. Petitioner alleges that the reason this Court should grant the writ is because there are "very important questions of Federal Law which should be settled by this Court." (See Petition, p. 15). Within the body of the argument petitioner also alleges conflicting opinions in the United States Courts of Appeals. (See Petition, pp. 18, 19, and 20). We respectfully submit that the Petition contains no argument to substantiate these allegations. As Mr. Chief Justice Taft stated:

> " . . . it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles, the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal. The present case certainly comes under neither head." *Layne & Bowler*

Corp. v. *Western Well Workes, Inc.*, (1923) 261 U.S. 387, 393, 67 L. Ed. 712, 714, 43 S. Ct. 422.

As to petitioner's allegation of an important question of federal law, petitioner's arguments cites no important question which has not already been settled by this Court. Indeed, petitioner's argument renders lip service to various federal statutes without any foundation relating to the issue on this appeal. Pursuant to Supreme Court Rule 23 (4), the failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition. Petitioner's brief is replete with confabulations, misrepresentations, and distortions of the facts in addition to vilification of respondents herein all having nothing to do with the issue of this case. Petitioner approaches the only issue in this case in a variety of unusual ways; however, regardless of petitioner's misconstruction and extravaganza, the one issue to be decided by this Court consistently remains: whether the trial court abused its discretion in denying a motion for preliminary injunction. This is hardly an important question of Federal Law. The proper use of judicial discretion in this area is not repugnant to ANY case law, Federal or otherwise. Petitioner has not demonstrated the manner in which the discretion exercised by the trial court and the court of review have been contrary to Federal Law or to decisions in this or any other court.

The infinite variety of situations in which a court of equity may be called upon for injunctive relief requires that the court have considerable discretion in granting or denying such relief. A preliminary injunction is an extraordinary and far-reaching remedy, the granting of

which is wholly within the discretion of the court as it views the particular facts of each case. If, however, there is any class of cases which plainly falls outside the professed considerations by which the Supreme Court exercises its discretionary juridicion, it is cases involving only the interpretation of the facts bearing on the issue. In those cases, as in the case at bar, the significance of facts becomes the bone of contention. Cases involving only an interpretation of conflicts in the evaluation of facts bearing on the issues are not within the considerations by which the Supreme Court exercises its discretionary jurisdiction.

The scope of inquiry on an appeal from denial of a preliminary injunction is limited exclusively to the question of whether the court below abused its discretion. *Kontes Glass Co.* v. *Lab Glass, Inc.*, C.A.N.J. 1967, 373 F. 2d 319; *Copeland* v. *South Bend Community School Corp.*, C.A. Ind. 1967, 376 F. 2d 585. The discretion of the court to grant or deny a preliminary injunction is subject to reversal *only* for abuse of discretion. *Jones* v. *Snead*, C.A. Mo. 1970, 431 F. 2d 1115; *Com-Share, Inc.* v. *Computer Complex, Inc.*, C.A. Mich. 1972, 458 F. 2d 1341. The District Court has wide discretion to issue or withhold a temporary injunction and ordinarily the Court of Appeals will not interfere. *Newbern* v. *Lake Lorelei, Inc.*, D.C. Ohio 1968, 308 F. Supp. 407; *Hulburt Oil & Grease Co.* v. *Hulburt Oil & Grease Co.*, C.A. Ill. 1965, 346 F. 2d 260, cert. den. 86 S. Ct. 78, 382 U.S. 835, 15 L. Ed. 2d 77. As can be seen from the order of the Court of Appeals below, where an appeal from an Order denying a preliminary injunction is taken, the Court will not consider the merits of the case further than is necessary to determine whether there has been an abuse of discretion. See *Hornback* v.

Brotherhood of R. R. Signalmen, C.A. Ky. 1965, 346 F. 2d 161. The discretion of the trial court must clearly be abused before Appellate Courts will reverse for failure to grant a preliminary injunction. *U.S.* v. *Board of Ed. of Greene County, Miss.,* C.A. Miss. 1964, 332 F. 2d 40. Since the discretion of the trial court is broad, and a strong showing of abuse must be made to reverse it (See *Detroit Football Co.* v. *Robinson,* C.A. La. 1960, 283 F. 2d 657) it is clear that the Appellate Court was correct in affirming the decision of the District Court. Petitioner has made no showing of judicial abuse and, indeed, the Appellate Court found none to exist.

There are four factors to be weighed in considering a motion for preliminary injunction:

1. A substantial question must be in issue.
2. There must be a strong probability of plaintiff's success on the merits.
3. The Court must balance the injuries to the parties.
4. Where appropriate, the public interest (which is of paramount importance) must be considered.

Environmental Defense Fund v. *T.V.A.,* D.C. Tenn. 1972, 339 F. Supp. 806. With those factors as a springboard, other considerations are also necessary. Injunctions should be issued sparingly due to their extraordinary nature. A Plaintiff must make a "clear and convincing showing" that he is entitled to the drastic relief of an injunction pending litigation. *Heyman* v. *Ar. Winarick, Inc.,* D.C. N.Y., 1958, 166 F. Supp. 880. Petitioner has not shown clearly or convincingly that he is entitled to a preliminary injunction according to the standards above. Petitioner asked the Court below to ignore the fact that there was a change of ownership by his incorporation and to allow

him to continue working under his old license by granting the injunction. Such incorporation clearly rendered petitioner's license invalid. (See Petition Appendix, p. 12-H). Since a preliminary injunction is an equitable remedy it is not granted where parties lack clean hands. *Clairol, Inc.* v. *Gillette Co.*, D.C. N.Y. 1967, 270 F. Supp. 371, aff'd. 389 F. 2d 264. Petitioner, having failed to comply with the provisions of his license, now asks this Court to consider anew issues already considered by the District Court and found to be correctly decided by the United States Court of Appeals.

Furthermore, regardless of petitioner's posture in this case, a preliminary injunction should not be issued in a doubtful case, unless the Court is convinced with reasonable certainty that the complaint must succeed at a final hearing. *Erie Lackawanna Ry. Co.* v. *Lighter Captains Union, Local 996, I.L.A.*, D.C.N.J. 1972, 338 F. Supp. 955. The record in this case indicates that conflicting interpretations of fact are in issue. The case can only be resolved at trial and therefore the preliminary injunction could not have been granted. *Tropic Film Corp.* v. *Paramount Pictures Corp.*, D.C.N.Y. 1970, 319 F. Supp. 1247. Where sharp issues of fact are presented, such as here, the case is not a fit one for preliminary relief and resolution of the disputed issues must await trial. *Gianni Cereda Fabrics, Inc.* v. *Bazaar Fabrics, Inc.*, D.C.N.Y. 1971, 335 F. Supp. 278. The requirement that there be an absence of serious dispute between parties as to facts alleged and the law applicable is not so much a separate criterion for granting a preliminary injunction as it is a recognition of the movant's burden of proof and the reluctance of Courts to decide novel questions of law on less than a complete record.

It is well settled that the party moving for a preliminary injunction carries the burden of convincing the Court that he is entitled to it. *Bowers* v. *Columbia General Corp.*, D.C. Del. 1971, 336 F. Supp. 609. He has the burden of establishing his likelihood of success on the merits; that it, of raising questions going to the merits so serious, substantial, difficult and doubtful as to make them fair ground for litigation and thus for more deliberate investigation. *Canty* v. *Board of Ed., City of N.Y.*, D.C.N.Y. 1970, 312 F. Supp. 254. Petitioner has never sustained his burden of establishing a likelihood of success on the merits according to the criteria above. He merely states "the petitioner's condition supports granting the relief since they are sure to prevail on the merits of this case." (See Petition, p. 16). No argument is offered as to the reason they are "sure to prevail." Mere citations of various statutes and constitutional provisions, without a showing of their relation to the case, do not explain to the Courts or respondents why petitioner is entitled to any relief whatsoever. Petitioner's disdain for the ordinary processes of judicial decision and government are exhibited throughout the argument. See Petition, e.g. p. 19: "The trial Judge was confused and never understood the issue before the Court or appreciated the complex and extraordinary legal position of the petitioners." If such was indeed the case, then the Court of Appeals must also have been "confused." Furthermore, petitioner has gone through every possible motion, including motions heretofore unheard of in order to delay the processes of judicial decision and government. As Mr. Frankfurter stated for the Supreme Court, there is a

> "process by which the wheat of worthy petitions for certiorari is sifted from the vast chaff of cases for which review is sought here, too often because

> of the blind litigiousness of parties or of the irresponsibility and excessive zeal of their counsel." *United States* v *Shannon*, (1951) 342 U.S. 288, 295, 96 L. Ed. 321, 328, —— S. Ct. ——.

Petitioner is clearly entitled to appeal a decision of the District Court denying a motion for preliminary injunction. Appeals are a matter of right, however, while the Supreme Court's *certiorari* decisions are wholly discretionary. *Durham* v. *U.S.*, 1971, 91 S. Ct. 858, 401 U.S. 481, 28 L. Ed. 2d 200.

Certiorari should not be granted except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the private parties herein, or, in cases where there is a real and embarrassing conflict of opinion and authority between Courts of Appeal. (See *Rice* v. *Sioux City Memorial Parks Cemetery*, 1955, 75 S. Ct. 614, 349 U.S. 70, 99 L. Ed. 897). It is respectfully submitted that since the only issue in this case is whether the District Court abused its wide discretion, it presents neither a substantial Federal question nor a conflict of decisions and the United States Supreme Court should not exercise its certiorari jurisdiction.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601, 312-793-3500,
Attorney for Respondents.

BONNY SUTKER BAREZKY,
Assistant Attorney General,
130 North Wells Street, Suite 1700,
Chicago, Illinois 60606, 312-793-5635,
Of Counsel.

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
July 10, 1973.

Before

Hon. *LUTHER M. SWYGERT, Chief Judge*
Hon. *ROGER J. KILEY, Circuit Judge*
Hon. *ROBERT A. SPRECHER, Circuit Judge*

HYDE PARK MEDICAL LABORATORY, INC., and JAMES A. WRIGHT,

Plaintiffs-Appellants,

No. 73-1242 vs.

ILLINOIS DEPARTMENT OF PUBLIC AID, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 72 C 2385
Richard B. Austin, *Judge.*

ORDER

This is an appeal from an order denying plaintiffs' motion for a preliminary injunction. The defendants-appellees have moved for affirmance without oral argument, pursuant to Circuit Rule 22. We have examined the briefs and the record on appeal and have concluded that the questions presented by the appellants' brief are insubstantial.

Plaintiff, Hyde Park Medical Laboratory, Inc., a previously unincorporated clinical laboratory licensed pursuant to the Illinois Clinical Laboratory Act, Ill. Rev. Stat. ch. 111-½ § 621-631, was incorporated on February 6, 1969. The licensing agency, the Illinois Department of Public Health, contends that it did not receive formal notice of the intent to incorporate or of the actual incorporation, although the plaintiffs have submitted a copy of a letter dated February 1, 1969, informing the Department that it was in the process of incorporating, that the incorporation was for tax purposes only, and that there would be no change in technical supervision, ownership or location.

The laboratory's license was renewed for the years 1970 and 1971. On August 20, 1971, the plaintiff Wright was notified by the Department that because of the change in ownership he would have to complete a new license application. He was also requested to return his old license to be voided. The plaintiff refused to complete the application form which would have classified the laboratory as a "new" laboratory. Plaintiffs vigorously resist this designation because it would subject the laboratory to numerous rules and regulations and a new statute which are not applicable to laboratories licensed before passage of the new act whose licenses have been continually renewed.* The license application was finally completed and received by the Department of Public Health on September 5, 1972. After the standard in-

---

* The appellants' brief, prepared by plaintiff James A. Wright, acting pro se, does not contain a specific citation of the new rules, regulation, and statute to which the plaintiff laboratory would be subject under the "new" classification.

vestigation by the Department the new license was mailed to the plaintiff Wright but he has refused to accept it.

The complaint filed by Hyde Park Medical Laboratory, Inc., and James A. Wright, its sole shareholder, president, and director alleged that the plaintiffs' civil rights had been violated as a result of the arbitrary and discriminatory failure to renew the plaintiff's license and to restore participation in the Department's Medical Assistance Program. Numerous other civil rights violations were also alleged, including: failure to provide a hearing prior to the revocation of the license and suspension of participation in the Medical Assistance Program; failure to provide a hearing prior to submitting complaints about the plaintiff to the Attorney General, the State's Attorney of Cook County, and other government agencies, discrimination on the basis of race; failure to pay numerous bill for services performed, defamation, destruction of plaintiff's business and personal reputation; and a conspiracy to defeat the plaintiff's efforts ot obtain a license.

It is not necessary to decide the numerous factual and legal issues raised by the plaintiffs' brief in this appeal, but merely to determine whether the district judge abused his discretion in denying a preliminary injunction.

From the transcript of the hearing on the motion for a preliminary injunction, it appears that the injunction was denied because the plaintiff Wright refused to sign a proposed stipulation for the entry of an order, to which both his counsel and the Attorney General had agreed. This order would have permitted the laboratory to operate under the rules and regulations for clinical laboratories and blood banks that were in effect prior to November 15, 1970, and would have required it to comply with rules and regulations regardless of their date of promulgation

where such requirements would be applicable to all laboratories that were in operation prior to November 15, 1970. It also ordered the defendants to issue a new license and ordered the plaintiff to complete the necessary forms and pay the required fee for the issuance of the license. This proposed stipulation would have provided a reasonable accommodation of the conflicting interests while the factual and legal issues were being litigated in the district court. We find no abuse of discretion in the denial of a preliminary injunction on the basis of the plaintiff Wright's unreasonable refusal to consent to the proposed stipulation. Accordingly,

IT IS ORDERED that the motion to affirm without oral argument be and the same is hereby granted and the judgment of the district court is AFFIRMED.